Lansco, Inc. v. Department of Environmental Protection

No. C-465-75 (N.J. Super. Ct. Ch. Div. December 4, 1975)

ELR Digest

The court awards plaintiff $155,714.72 against its insurer for costs incurred in cleaning up a 14,000 gallon oil spill of undetermined cause from its storage tanks into the Hackensack River. Under applicable statutes, N.J.S.A. 58:10-23.4, -.5, -.7; 23:5-28, plaintiff was liable for removal of the oil or for payment of costs if the removal was undertaken by the state or its agent. Plaintiff's insurer, Royal Globe, refused payment on the grounds that the applicable statutes did not impose liability for non-negligently-caused oil spills. The insurer's first argument, that the spill falls within the policy exclusion for non-accidental occurrences, is without merit. The spill was both sudden and accidental, within the common meaning of those terms, even if deliberately caused by a third party. As to insurer's second argument, that the policy does not extend to money damage recoverable by the state for injury to the environment, a state has long been able to maintain an action for recovery of damages to its environment, *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); *cf. Borough of Neptune City v. Borough of Avon-By the Sea,* 61 N.J. 296, 2 ELR 20519 (1972), and to collect such damages. *State v. Jersey Central Power & Light,* 125 N.J. Super. 97 (Law Div. 1973), *aff'd,* 133 N.J. Super. 375 (App. Div. 1975), [*rev'd,* N.J. S. Ct., No. A-28, Jan. 22, 1976. -- *Ed.*]. An insured should receive what he contracts for. *Bryan Const. Co. v. Employers' Surplus Lines Ins. Co.,* 60 N.J. 375 (1972). The policy in question specifically covers liability for property damage from sudden and accidental oil discharges. The amount of indemnification is the statutorily-set cost of clean-up.

The insurer's final argument, that statutory liability can be imposed only upon a showing of plaintiff's fault, likewise fails. On the contrary, N.J.S.A. 58.10-23.1 *et seq.* imposes liability regardless of fault. *See generally* Bergman, *No Fault for Oil Pollution,* 5 J. Mar. L. & Com. 1 (1973). Analogous language in the New Jersey Air Pollution Control Code has been held to impose liability regardless of intent. *Dep't of Health v. Concrete Specialties, Inc.,* 112 N.J. Super. 407 (App. Div. 1970). See also *State v. Kinsley,* 105 N.J. Super. 347 (App. Div. 1969), imposing liability without fault under N.J.S.A. 23:5-28 *supra.* The statute's legislative history demonstrates that only discharges from an act of God or war were intended to be exempted from liability.

Royal Globe is barred by laches from raising on appeal the issue of reasonableness of the clean-up charges, since its representative at the recovery operation never questioned the charges. The state's motion to dismiss is granted, since it is immune from liability under the Tort Claims Act, N.J.S.A. 59:1-1 *et seq.* Plaintiff is also awarded $4,925.00 in attorneys' fees against Royal Globe.

The full text of this opinion is available from ELR (14 pp. $1.75, ELR Order No. C-1023).

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Gelman, J.

[OPINION OMITTED BY PUBLISHER IN ORIGINAL SOURCE]
